THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.16109 OF 2002

ORDER:

This writ petition is filed seeking a writ of *mandamus* declaring the action of the respondent in not passing orders of appointment of hereditary Muthawalli on permanent basis, in respect of Aurangabad Mosqque situated at Aurangabad village, Kovvur Mandal, West Godavari District, as being illegal and arbitrary.

According to the petitioner, after the Wakf Act, 1954 (for brevity, `the Act') came into force, a survey was conducted in respect of all the wakf institutions by appointing a Wakf Survey Commissioner under Section 4 of the Act and the said Commissioner submitted report under Section 5(1) of the Act to the Government and the Government of Andhra Pradesh transmitted the Commissioner's report as also the properties attached to various wakf institutions to the A.P. State Wakf Board for publishing in the official Gazette under Section 5(2) of the Act. The petitioner claims that in the said report, the Commissioner pointed out that the office of Muthawalli of Aurangabad mosque is hereditary and the properties attached to the said mosque were published in the Gazette dated 19.4.1962 showing that the father of the petitioner was Muthawalli. The petitioner pleads that after his father passed away, he made an application to the Secretary, A.P. Wakf Board seeking appointment as Muthawalli, as the said office is held to be hereditary and the Secretary issued notification on 21.6.1975 calling for objections and also report from Inspector- Auditor, Wakf, and no objections were received from any one and the Inspector-Auditor, Wakf submitted report on 12.11.1975 for passing appropriate orders.

The petitioner has been managing the affairs of the institution ever since his father's death.

While so, a Managing Committee was appointed by proceedings dated 28.7.1997 of the respondent, without holding any enquiry or issuing any notice to the petitioner. The petitioner filed W.P.No.21513 of 1997 challenging the appointment of the managing committee. By order dated 3.8.1998, W.P.No.21513 of 1997 was disposed of as infructuous, as the term of the managing committee has expired by 27.7.1998, with a direction to the respondent herein (who was first respondent in the said writ petition) to dispose of the application submitted by the petitioner for being considered to the post of Muthawalli within a period of three months. As the respondent failed to comply with the above direction, the petitioner filed C.C.No.1349 of 1999. Thereafter, the respondent passed order dated 18.11.1999 appointing the petitioner as temporary Muthawalli for a period of six months subject to submission of the report by the Sub Committee. As no final orders were passed, the petitioner gave a notice to the respondent on 3.5.2000 and the respondent gave a reply on 22.6.2000 stating that the petitioner's appointment would continue till a decision is taken by the Board after receipt of the sub committee's report. The term of the Board expired on 27.6.2001 and a new Board was constituted under Section 14 of the Act on 13.11.2001. Thereafter, a fresh sub-committee was constituted on 20.2.2002. According to the petitioner, the said sub-committee also submitted its report, but, however, the respondent has not passed any orders on the representation of the petitioner for appointing him as hereditary Muthawalli on regular basis.

Along with the writ petition, the petitioner filed W.P.M.P.No.20225 of 2002 for interim direction to the respondent to

pass orders on the application of the petitioner, in pursuance of the report of the Inspector-Auditor, Wakfs, West Godavari District dated 12.11.1975. On 27.8.2002, interim direction was issued by this Court. When the matter came up for hearing, learned counsel for the respondent sought time for verification as to whether any orders were passed on the representation made by the petitioner and in terms of the interim direction. Accordingly, the matter was posted to 19.7.2006. On 26.7.2006, when the matter again came up, none appeared for the respondent and no representation was made on his behalf.

Heard the arguments of learned counsel for the petitioner.

It is not disputed that as per the report of the Survey (Wakf) Commissioner in respect of the subject mosque, the office of Muthawalli was held to be hereditary and in the Gazette publication dated 19.4.1962, the petitioner's father was shown as Muthawalli and after his death, the petitioner made an application to the Wakf Board for appointment as Muthawalli and a Notification dated 21.6.1975 was issued by the Secretary, Wakf Board calling for objections, but no objections were received from any one and the Inspector-Auditor, Wakf, also submitted his report on 12.11.1975. Ever since, the matter has been pending with the respondent without passing any final orders.

It is also not disputed that the petitioner filed W.P.No.21513 of 1997 challenging the appointment of the managing committee and the said writ petition was dismissed as infructuous as the term of the managing committee has expired, but, however, with a direction to the respondent to consider the application of the petitioner and pass orders within three months. As the said direction was not complied with, the petitioner filed C.C.No1349 of 1999, whereupon, the respondent appointed the petitioner as a Muthawalli on temporary

basis for a period of six months subject to submission of report by the sub committee. The petitioner, however, admittedly, was continuing to function as Muthawalli, but no final orders were passed so far on his representation to appoint him as hereditary Muthawalli, though the said representation was pending for the past thirty years.

Admittedly, the term of the Board has expired on 27.6.2001 and the new Board was constituted on 13.11.2001. A fresh sub committee was appointed on 20.2.2002 and the said sub committee also gave its report, but, still, no orders were passed on the petitioner's representation. It only shows the lethargic attitude of the respondent besides supine indifference to the orders passed in the earlier Writ Petition No.21513 of 1997. It is obvious that when a contempt case was filed in C.C.No.1349 of 1999, the respondent, with a view to get over the consequences thereof, appointed the petitioner as temporary Muthawalli and thereafter, allowed the matter to drift away. When the office of Muthawalli pertaining to the subject mosque was held to be hereditary and was accordingly notified in the Gazette, way back in 1962, and no objections were received from any quarter for appointment of the petitioner as Muthawalli on the demise of his father and the Inspector-Auditor, Wakf also gave his report in 1975 itself and the sub committees appointed by two successive Managing committees also gave their reports, there is absolutely no justification for the respondent for not passing any final orders on the thirty-year-old representation of the petitioner and especially, in spite of a specific direction given in the earlier W.P.No.21513 of 1997.

The writ petition is therefore, disposed of, with a direction to the respondent to pass necessary appropriate orders on the representation dated 12.11.1975 of the petitioner seeking appointment as Muthawalli to the subject mosque, within a period of one month

from the date of receipt of a copy of this order. No order as to costs.

G.V.SEETHAPATHY, J

02nd August, 2006
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THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY

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DATED : 02.08.2006